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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1993**

Robert Zeman,
Relator,

vs.

City of Minneapolis,
Respondent.

**Filed September 18, 2017
Affirmed
Smith, John, Judge***

Minneapolis Department of Regulatory Services

James Heiberg, St. Paul, Minnesota (for relator)

Susan L. Segal, Minneapolis City Attorney, Lee C. Wolf, Assistant City Attorney,
Minneapolis, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Bratvold, Judge; and Smith,
John, Judge.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm the revocation of respondent's rental license because the revocation is supported by the record.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Relator Robert Zeman, through his company Rori Investments, LLC, owned and managed a rental property located on Girard Avenue North in Minneapolis with his partner, Richard Heggemeyer. On December 16, 2014, an incident occurred on one of Zeman's other properties that qualified for a conduct notice under Minneapolis, Minn., Code of Ordinances (MCO) § 244.2020 (2016). As a result, Zeman worked with Luther Krueger, a crime prevention analyst from the Minneapolis police department, to submit an acceptable management plan. This management plan would apply to all of Zeman's properties.

On August 6, 2015, an incident involving narcotics occurred at Zeman's Girard Avenue North property that also qualified for a conduct notice. Krueger advised Zeman that his prior management plan would be a satisfactory management plan for this property as well.

On March 29, 2016, Krueger asked Zeman for documentation that indicated that the management plan was being implemented. In response, Krueger received documentation including background-check results for tenants that were accepted for residency at the Girard Avenue North property. After review, Krueger discovered two cases where

potential tenants failed the background checks but were still allowed to sign leases, in conflict with the accepted management plan. As a result, on May 5, 2016, Krueger requested that the rental license for the Girard Avenue North property be revoked based on the violation of the accepted written management plan, which was a violation of MCO § 244.2020(c).

On June 9, 2016, a notice of revocation of rental license was sent to Zeman informing him that it was recommended that the city council revoke the rental license for the Girard Avenue North property due to a violation of ordinance. On June 28, 2016, Zeman filed an administrative appeal. Before the hearing, Heggemeyer bought out Zeman's interest in the Girard Avenue North property. The hearing was held on August 30, 2016, and as a result of the hearing, the administrative hearing officer recommended that Zeman's rental license for the Girard Avenue North property be revoked. Respondent City of Minneapolis made the final decision to revoke Zeman's rental license for the Girard Avenue North property. Zeman appeals.

D E C I S I O N

A city's revocation of a rental license is a quasi-judicial decision reviewable through a writ of certiorari. *In re Khan*, 804 N.W.2d 132, 136 (Minn. App. 2011). "A city council's decision may be modified or reversed if the city violated constitutional provisions, exceeded its statutory authority, made its decision based on unlawful procedure, acted arbitrarily or capriciously, made an error of law, or lacked substantial evidence in view of

the entire record submitted.” *Montella v. City of Ottertail*, 633 N.W.2d 86, 88 (Minn. App. 2001) (quotation omitted). On certiorari review, an appellate court “will uphold the decision if the lower tribunal furnished any legal and substantial basis for the action taken.” *Staheli v. City of St. Paul*, 732 N.W.2d 298, 303 (Minn. App. 2007) (quotation omitted).

I. The interests of justice do not require us to address Zeman’s constitutional arguments that are raised for the first time on appeal.

Zeman makes a variety of constitutional arguments regarding both himself and his current and prospective tenants for the first time on appeal. Zeman did not present these constitutional arguments to the administrative bodies below because they did not possess subject-matter jurisdiction. *See Neeland v. Clearwater Mem’l Hosp.*, 257 N.W.2d 366, 368 (Minn. 1977) (stating that constitutional challenges cannot be decided by administrative bodies). We ordinarily do not consider issues raised for the first time on appeal, even when those issues are challenges to the constitutionality of a statute or ordinance. *State v. Williams*, 794 N.W.2d 867, 874 (Minn. 2011). We may choose to address constitutional issues that were not raised below when the interests of justice require their consideration and when doing so would not work an unfair surprise on a party. *Id.*

Here, the interests of justice do not require our consideration of Zeman’s constitutional arguments. The record regarding Zeman’s arguments is inadequate. And Zeman could still bring these arguments to a district court through a declaratory-judgment action. *See Connor v. Chanhassen Twp.*, 249 Minn. 205, 209, 81 N.W.2d 789, 793-94 (1957) (“In a suit to test the validity of a municipal ordinance, this court held that a declaratory judgment action was proper.”). Through that medium, Zeman would be able

to present evidence in support of his arguments. Therefore, because Zeman has an alternative method of presenting his arguments, the interests of justice do not require us to address them.

II. Zeman received notice of the management plan and its implications.

Zeman next argues that he did not receive a paper copy of the management plan and did not realize that the consequences of not complying with the plan would be revocation of his license. But Zeman does not dispute that he viewed the management plan on an electronic device. And Zeman does not cite any authority for the proposition that he must have been given a paper copy instead of an electronic version. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (stating that issues not adequately briefed on appeal need not be addressed). Additionally, both MCO § 244.2020(c) and the notice Zeman received notice that failure to implement all provisions of the management plan may result in an action by city council to revoke his license. Therefore, Zeman did receive notice of the management plan and its implications.

III. The license revocation also affects Rori Investments and Heggemeyer.

Zeman's final argument is that the city cannot revoke the license of Rori Investments or Heggemeyer. City ordinances show that both owners and persons responsible for maintenance and management have an interest in the rental license. According to MCO § 244.1940(c), "[a]ny action taken under this section shall be instituted against the rental dwelling license held by the owner(s), licensee and the person designated by the owner as the person responsible for the maintenance and management of the licensed property." Rori Investments is the listed owner of the property and obtained the license for

the property. Zeman is the licensee, and Zeman and Heggemeyer are partners in Rori Investments. Therefore, Rori Investments and Heggemeyer are also affected by the license revocation.

Affirmed.